

to reflect completely the provisions of the statute.

We also are deleting other references in the section to the invalidated fault requirement. We are eliminating paragraph (c)(4), which requires that VA be at fault to establish entitlement for claims based on being transported while in hospitalized status. Such claims will now be adjudicated under the standard applicable to hospitalization, treatment, or examination. We are also making corresponding changes to paragraph (c)(7) to remove the fault requirement for claims based on nursing home care.

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule will directly affect VA beneficiaries but will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

The Office of Management and Budget has reviewed this regulatory action under Executive Order 12866.

The Catalog of Federal Domestic Assistance program number is 64.109.

#### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 23, 1995.

**Jesse Brown,**  
*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR Part 3 is amended as set forth below:

#### PART 3—ADJUDICATION

##### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.358, paragraph (c)(4) is removed, and paragraphs (c)(5), (c)(6), and (c)(7) are redesignated as paragraphs (c)(4), (c)(5), and (c)(6), respectively.

3. In § 3.358, paragraph (c)(3) is revised, and redesignated paragraph (c)(6) is amended by revising the third sentence, to read as follows:

##### § 3.358 Determinations for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

\* \* \* \* \*

(c) \* \* \*

(3) Compensation is not payable for the necessary consequences of medical or surgical treatment or examination properly administered with the express or implied consent of the veteran, or, in appropriate cases, the veteran's representative. "Necessary consequences" are those which are certain to result from, or were intended to result from, the examination or medical or surgical treatment administered. Consequences otherwise certain or intended to result from a treatment will not be considered uncertain or unintended solely because it had not been determined at the time consent was given whether that treatment would in fact be administered.

\* \* \* \* \*

(6) \* \* \* If additional disability results from medical or surgical treatment or examination through negligence or other wrongful acts or omissions on the part of such a nursing home, its employees, or its agents, entitlement does not exist under this section unless there was an act or omission on the part of the Department of Veterans Affairs independently giving rise to such entitlement and such acts on the part of both proximately caused the additional disability.

(Authority: 38 U.S.C. 1151)

[FR Doc. 95–6510 Filed 3–15–95; 8:45 am]

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#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Health Care Financing Administration

##### 42 CFR Part 410

[BPD–724–F]

RIN 0938–AF26

##### Medicare Program; Medicare Coverage of Screening Mammography; Correction

**AGENCY:** Health Care Financing Administration (HCFA), HHS.  
**ACTION:** Correcting amendment.

**SUMMARY:** This document corrects a technical error that appeared in the final regulations published in the **Federal Register** on September 30, 1994 (59 FR 49826). Those regulations, in part, established conditions for coverage of diagnostic mammography that are

similar to those we had established for screening mammography. This correcting amendment restates the applicability of diagnostic mammography to men as well as to women.

**EFFECTIVE DATE:** October 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** William Larson, (410) 966–4639.

**SUPPLEMENTARY INFORMATION:** This document corrects a technical error that appeared in the final regulations published in **Federal Register** Document [94–24335] on September 30, 1994 (59 FR 49826). Those regulations, in part, established conditions for coverage of diagnostic mammography that are similar to those we had established for screening mammography.

The regulation set forth at 42 CFR 410.34 ("Mammography services: Conditions for and limitations on coverage") contains an omission, which may prove to be misleading. In the definition of "diagnostic mammography" in paragraph (a)(1) of § 410.34, we inadvertently failed to include a symptomatic man in the coverage of services under the diagnostic mammography benefit. This correcting amendment restates the applicability of diagnostic mammography to men as well as to women. Therefore, we are correcting § 410.34(a)(1) to clarify that a symptomatic man or woman can receive coverage of services under the diagnostic mammography benefit.

We wish to note that section 1861(jj) of the Social Security Act states explicitly that "screening" mammography is covered only for women. Section 410.34(a)(2), relating to the definition of screening mammography, is correct as it reads, based on current law.

##### List of Subjects in 42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

Accordingly, 42 CFR part 410 is corrected by making the following correcting amendment:

##### PART 410—[AMENDED]

1. The authority citation for part 410 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.34, the introductory text of paragraph (a) is republished, and paragraph (a)(1) is revised to read as follows:

**§ 410.34 Mammography services: Conditions for and limitations on coverage.**

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Diagnostic mammography* means a radiologic procedure furnished to a symptomatic man or woman for the purpose of detecting breast disease and includes a physician's interpretation of the results of the procedure.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: March 7, 1995.

**Neil J. Stillman,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 95-6501 Filed 3-15-95; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 74

[MM Docket No. 93-154; FCC 95-69]

### Aural Broadcast Station Auxiliary Facilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts rules to permit certain unapproved transmitters to be retained and used for backup operations in the band 944-952 MHz at aural broadcast stations' auxiliary facilities. The rule will permit broadcast licensees to temporarily use their outmoded equipment, which has been displaced from full time operation by approved equipment, for backup operations at auxiliary facilities.

**EFFECTIVE DATE:** April 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Bernard Gorden, Mass Media Bureau, (202) 418-2190.

**SUPPLEMENTARY INFORMATION:** Adopted: February 24, 1995; Released: March 7, 1995 By the Commission:

### Introduction

1. We herein amend Sections 74.550 of our rules to permit certain unapproved transmitters in the band 944-952 MHz which have been displaced by approved equipment for primary use to be retained for backup purposes at Aural Broadcast Auxiliary Stations.

### Background

2. In 1985, the Commission adopted a *Report and Order* in MM Docket No. 85-36, 50 FR 48596, January 26, 1985,

which required all new transmitters for aural studio transmitter-link/intercity relay (STL/ICR) operation in the 944-952 MHz frequency band to be approved prior to marketing. Continued use of existing non-approved equipment was allowed for a period ending on July 1, 1990, which was later extended to July 1, 1993, 55 FR 3062, January 30, 1990.

3. In June of 1993, the Notice of Proposed Rule Making in MM Docket No. 93-154, 58 FR 33923, June 22, 1993, ("NPRM") in the above-entitled matter was issued in response to informal suggestions from various parties that the Commission should permit the retention and use of existing unapproved aural broadcast auxiliary transmitters for backup purposes. This proposal would permit broadcasters to retain and use their existing unapproved primary equipment as backup equipment after it was displaced from primary service by approved equipment under the requirements of our rules. The proposal was intended to avoid burdening licensees with additional expenditures to replace infrequently used backup transmitters with approved equipment, and to permit the installation of backup facilities in situations which have not previously been practicable. Backup auxiliary service facilities are used by many broadcast station licensees to avoid undue disruption in programming should the regular auxiliary transmitter fail or require servicing. Thus, the Commission concluded that limited short-term backup use of unapproved equipment could be permitted. The Commission, therefore, proposed to allow all transmitters removed from primary service to be retained for backup purposes, provided no interference is caused and that such transmitters are not used for more than 720 cumulative hours per year without explicit Commission authority.<sup>1</sup> In addition, the NPRM stated that the Commission would allow licensees to retain unapproved equipment for backup purposes until final action is taken in this proceeding, and thereafter if the proposed rule is adopted.

### Comments

4. Comments supporting adoption of the proposed amendments of Section 74.550 were received from the National Association of Broadcasters ("NAB") and National Public Radio ("NPR"). No opposing comments were received.

5. NAB states that many stations have purchased new equipment to comply

<sup>1</sup> Within the allowed 720 cumulative hours of operation, there are no limits on the amount of permitted consecutive hours or number of separate uses of unapproved equipment.

with the current requirements of Section 74.550 of the Commission's rules. NAB notes that given the current financial conditions prevailing in the broadcast industry, most licensees cannot justify purchasing additional equipment for backup facilities. However, while their old equipment does not meet the new more stringent standards, NAB and NPR suggest the old equipment is fully functional and is more than adequate for backup purposes.

### Discussion

6. We have reviewed the comments and conclude for the reasons advanced in the NPRM that adoption of the proposal would serve the public interest. We further agree with NPR that there should not be any significant adverse consequences from continued use of unapproved STL/ICR equipment under the conditions proposed in the NPRM. These backup transmitters can maintain the broadcast station's ability to provide continued service in the event of primary equipment failure without undue risk of harmful interference. However, we caution licensees that the unapproved equipment has wider channel bandwidth, and thus, may be prone to cause interference, especially in congested spectrum-use areas. Licensees must not use the unapproved equipment on a regular or primary basis and stations using such equipment should be prepared to demonstrate that it normally uses approved equipment. A licensee is not permitted to obtain unapproved equipment from other licensees or other sources for backup use. Our action here is intended only to permit the retention and continued use, in a backup role of equipment that a licensee already possesses.

### Procedural Matters

7. *Regulatory Flexibility Act.* We certify that the regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because there will to be a significant negative economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Pub. L. No. 96-354.94 Stat.1164.5 U.S.C. Section 601 et seq (1981).

8. Therefore, it is ordered that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that effective April 17, 1995, Part 74 of the Commission's Rules and Regulations is amended as set forth below. It is further ordered that this proceeding is terminated.

9. Further information may be obtained from Bernard Gorden, Mass